

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOHNATHAN REICH,

Plaintiff,

**MEMORANDUM & ORDER**

19-CV-6491 (EK) (RER)

-against-

CITY OF NEW YORK, JOHN FOGELMAN in his individual and official capacity as a police officer employed by the City of New York, JOHN DOES #1-8, GEORGE DELUCA-FARRUGIA in his individual and official capacity as an Assistant District Attorney, ANDREW CUOMO in his individual capacity, GOVERNOR KATHY HOCHUL in her official capacity.

Defendants.

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ERIC KOMITEE, United States District Judge:

On November 17, 2019, *pro se* Plaintiff Johnathan Reich filed this action against the City of New York, Detective John Fogelman, John Does #1-8, Assistant District Attorney George Deluca-Farrugia, and former Governor Andrew Cuomo<sup>1</sup> ("Defendants"). ECF No. 1. Reich alleges, pursuant to 42 U.S.C. §§ 1983 and 1988, that Defendants conspired with unnamed officials in Connecticut to violate his rights. Amended

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<sup>1</sup> Plaintiff sued Andrew Cuomo in both his individual capacity and his capacity as Governor of New York. Since Plaintiff filed his amended complaint, Mr. Cuomo resigned from office and was replaced by Governor Kathy Hochul. Pursuant to Federal Rule of Civil Procedure 25(d), Governor Hochul is substituted as the defendant for the official capacity claim.

Complaint ¶¶ 1, 23-37, ECF No. 19. He also alleges that the Governor of New York failed to conduct a proper investigation under N.Y. C.P.L.R. § 570 and failed to produce information that Plaintiff requested pursuant to New York's Freedom of Information Law, N.Y. Pub. Off. L. § 86. *Id.* ¶¶ 3, 66, 71, 93. On November 16, 2020, the City of New York, Fogelman, and Deluca-Farrugia (the "City Defendants") moved to dismiss Reich's claims against them pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 22. On April 23, 2021, then-Governor Cuomo moved to dismiss Reich's claims against him (in both capacities) pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), 12(b)(5), and 12(b)(6). ECF. No. 38.

The Court has received two Report and Recommendations (R&Rs) from Magistrate Judge Ramon E. Reyes. The first, dated July 23, 2021, recommends that the Court dismiss Reich's claims against the City Defendants. ECF No. 44. The second, dated October 5, 2021, recommends that the Court dismiss Reich's claims against defendant Cuomo (in his individual capacity) and Governor Hochul. ECF No. 47. Plaintiff filed objections to each R&R, ECF No. 45, 48, to which Defendants responded. ECF No. 46, 49.

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). The district

court reviews *de novo* those portions of an R&R to which a party has specifically objected. *Id.*; Fed. R. Civ. P. 72(b)(3); see also *Kruger v. Virgin Atl. Airways, Ltd.*, 976 F. Supp. 2d 290, 296 (E.D.N.Y. 2013) (“A proper objection is one that identifies the specific portions of the R&R that the objector asserts are erroneous and provides a basis for this assertion.”), *aff'd*, 578 F. App'x 51 (2d Cir. 2014).

Having conducted a *de novo* review of the two thorough reports and recommendations, the Court finds no error and adopts both in their entirety. The Court dismisses this action as to all Defendants because the amended complaint does not “state a claim for relief that is plausible on its face” as required by Rule 12(b)(6). See *Bell Atlantic Corp v. Twombly*, 550 U.S. 544, 570 (2007). In addition, dismissal is warranted as to defendants Cuomo and the Governor of New York because the Court lacks personal jurisdiction, and service of process was insufficient. See Fed. R. Civ. Pro. 12(b)(2) and (5). The Court declines to exercise supplemental jurisdiction over any state law claims.

In sum, the Court adopts Judge Reyes's R&Rs in their entirety. This case is dismissed with prejudice. The Clerk of Court is respectfully directed to enter judgment and close this case.

SO ORDERED.

/s/ Eric Komitee  
ERIC KOMITEE  
United States District Judge

Dated: Brooklyn, New York  
December 7, 2021